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Supreme Court of the United States

OCTOBER TERM, 1948

No. 249

T. B. HOLLIDAY, APPELLANT,

versus

GOVERNOR OF STATE OF SOUTH CAROLINA, ATTORNEY GENERAL OF STATE OF SOUTH CAROLINA, R. H. BEARDEN, SHERIFF OF GREENVILLE COUNTY, SOUTH CAROLINA, AND ALL LAW ENFORCEMENT OFFICERS OF THE STATE OF SOUTH CAROLINA, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA

MOTION TO DISMISS OR AFFIRM

JOHN M. DANIEL,
Attorney General of South Carolina.

T. C. CALLISON,
Assistant Attorney General.

J. MONROE FULMER,
Assistant Attorney General.
Attorneys for Appellees, Governor State of South Carolina, Attorney General State of S. C. and all Law Enforcement Officers of State of South Carolina.

J. D. TODD, JR.,
Attorney for Appellee, Sheriff of Greenville County, South Carolina.

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MOTION TO DISMISS OR AFFIRM

Pursuant to the provisions of Rules 7 and 12 of the Supreme Court of the United States, the appellees move the Court to dismiss the appeal or in the alternative to affirm the judgment of the Court upon the following grounds:

1. That the questions on which the decision of the cause depends are so unsubstantial as not to require further argument because:

(a) The State of South Carolina has the power and authority to define its policy with reference to gambling or anything which might encourage gambling under its general police power.

(b) The appellant has failed to show that the statutes attacked are beyond the general police power of the State.

(c) The State of South Carolina has the right to dedeclare the machines in question to be gambling devices *per se.*

(d) The Supreme Court of South Carolina having declared that the machines in question are gambling devices *per se* under Section 1301 of the 1942 Code of Laws for South Carolina, and no appeal having been taken therefrom, the construction of the statute by the highest Court in the State is binding upon Federal Courts.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General of South Carolina.

T. C. CALLISON,
Assistant Attorney General.

J. MONROE FULMER,
Assistant Attorney General.

Attorneys for Appellees, Governor State of South Carolina, Attorney General State of S. C. and all Law Enforcement Officers of State of South Carolina.

J. D. TODD, JR.,
Attorney for Appellee, Sheriff of Greenville County, South Carolina.

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BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

STATEMENT

Appellant, a North Carolina Corporation, sought an interlocutory and permanent injunction before a three-judge District Court convened pursuant to Section 266 of the Judicial Code against the enforcement by the appellees, South Carolina law enforcement officers, of certain "anti-gambling laws" of South Carolina. Appellant's contention is that the statutes in question (Sections 1301, 1301-1, Act No. 284 of the Acts of 1947 General Assembly of South Carolina) are unconstitutional in that they are in violation of

the appellant's rights as guaranteed by the 14th Amendment of the Constitution of the United States.

At the hearing before the three-judge Court a final decree was issued on July 20, 1948, dismissing the suit and denying the application for an injunction. However, the Order accompanying the decree enjoined the appellees from seizing and destroying the machines of the appellant pending appellant's appeal to the Supreme Court of the United States. The application of the appellant for a restraining order against the appellees interfering with the operation of the said machines pending the appeal to the Supreme Court was denied by the three-judge Court and the same application was also subsequently denied by the Chief Justice of the Supreme Court. The three-judge Court held that the South Carolina statutes were valid.

It is the appellees' position that appellant's constitutional questions are so unsubstantial as not to require argument. Authorities supporting these points are cited below.

The appellant's constitutional questions are without substance, having been settled by decisions of this Court.

South Carolina has the right without question under the general police powers of the State to define its public policy with reference to gambling or anything which may tend toward or encourage the same.

Murphy v. Cal., 225 U. S., 623, 32 S. Ct., 697;

Phillips v. City of Atlanta, 145 F. (2d), 470;

Calcutt v. McGeachy, 195 S. E. 49, 213 N. C. 1;

Eccles v. Stone, 183 Southern 628, 134 Fla. 113;

Woodward v. City of Lithonia, 11 S. E. (2d), 476, 191 Ga. 234;

Approximately Fifty-nine Gambling Devices v. People ex rel. Burke, 130 P. (2d), 920, 110 Colo. 82;

People v. One Pin Ball Machine, 44 N. E. (2d), 950, 316 Ill. App. 161;

Oatman v. Davidson, 16 N. W. (2d), 665, 310 Mich. 57;

People v. Bitter, 32 N. Y. Supp. (2d), 176.

The highest Court in the State of South Carolina has held the machines in question to be gambling devices *per se.*

Alexander v. Martin, Sheriff, 192 S. C. 176, 6 S. E. (2d) 20;

Alexander v. Hunnicutt, Sheriff, et al., 196 S. C. 364, 13 S. E. (2d), 630;

State v. Appley, 207 S. C., 284, 35 S. E. (2d), 835;

Ingram v. Bearden, Sheriff, 47 S. E. (2d), 833.

The statutes in question (Section 1301, 1301-1 of the Code of Laws for South Carolina) were held to be constitutional in 1931 by a three-judge statutory Court. *Durant v. Bennett, Sheriff, et al.,* 54 Fed. Rep. (2d), 634. Thus on two occasions a three-judge Court has held the statutes in question to be constitutional and not in violation of the 14th Amendment to the Constitution of the United States as appellant now contends.

CONCLUSION

It is submitted that the constitutional question raised by the appellant is unsubstantial.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General of South Carolina.

T. C. CALLISON,
Assistant Attorney General.

J. MONROE FULMER,
Assistant Attorney General.

Attorneys for Appellees, Governor State of South Carolina, Attorney General State of South Carolina and all Law Enforcement Officers of State of South Carolina.

J. D. TODD, JR.,
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